

Date: April 28, 2010
W.I.: 1514
Referred by: BATA Oversight

ABSTRACT

BATA Resolution No. 93

The annual operating budget of the Authority provides for fund transfers to the Metropolitan Transportation Commission for transportation and transit projects. This resolution authorizes the Authority to enter into a Funding Agreement that would require the Authority to make a payment to MTC equal to the estimated present value of specified fund transfers for the next 50 years and relieve the Authority from making those fund transfers for that 50 year period.

Discussion of this action is contained in the Executive Director's accompanying memorandum dated April 7, 2010.

Date: April 28, 2010
W.I.: 1514
Referred by: BATA Oversight

Re: Funding Agreement between BATA and the Metropolitan Transportation Commission (MTC) for payment to MTC equal to the estimated present value of specified fund transfers for the next 50 years

BAY AREA TOLL AUTHORITY

RESOLUTION NO. 93

WHEREAS, the Bay Area Toll Authority (the "Authority") is required by the Streets and Highways Code to transfer funds to the Metropolitan Transportation Commission ("MTC") for the purposes and on the terms and conditions described in the recitals to the draft Funding Agreement between the Authority and MTC presented to this meeting (the "Funding Agreement");

WHEREAS, all of the projects to be funded under the Funding Agreement are or will be determined by MTC to be essential to the regional transportation system planned by MTC pursuant to state law;

WHEREAS, the projected fund transfers described in the Funding Agreement as AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers will be inadequate to timely fund all of the projects contemplated by MTC unless prepayment by the Authority pursuant to the Funding Agreement occurs;

WHEREAS, the Authority has the ability to issue subordinated toll bridge revenue bonds and use the proceeds thereof, together with cash on hand, to prepay Fund Transfers to MTC;

WHEREAS, MTC has requested that the Authority enter into and perform the Funding Agreement in furtherance of the Authority's statutory obligation to participate in support of MTC;

WHEREAS, performance of the Funding Agreement will require the Authority to transfer certain funds to MTC and in connection with such transfer assist MTC in the financing of certain capital projects authorized to be funded with AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers (the "Projects");

WHEREAS, the Authority is responsible for the administration of all toll revenues from the bridges;

WHEREAS, Authority management has advised the governing board that the implementation of the Funding Agreement is not projected to require an increase in toll rates;

WHEREAS, pursuant to Section 30960 of the Streets and Highways Code, the Authority is authorized to issue additional capital projects bonds as required by the Funding Agreement payable from the revenues of the tolls imposed on the toll bridges owned by the State of California located in the region under the jurisdiction of MTC, and in Resolution 92 the Authority has authorized such bonds (the "Bonds") to be issued pursuant to the provisions of Section 30961 of the Streets and Highways Code and in accordance with the provisions incorporated therein of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code of the State of California) (together with the portions of the Streets and Highways Code applicable to the Authority, the "Act");

WHEREAS, all acts, conditions and things required by the Act and the Constitution and the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize the execution, delivery and performance of the Funding Agreement; now, therefore, be it

RESOLVED, that the Authority finds that the foregoing recitals are true and correct; and be it further

RESOLVED, that the Authority acknowledges its statutory obligation to participate in support of MTC and is willing to issue Bonds and pay money to MTC as provided in the Funding Agreement but only because the Authority will be allocated all revenues from and be relieved of responsibility for making AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for any reason from any Authority funds for 50 years; and be it further

RESOLVED, that the Authority hereby approves the Funding Agreement and hereby authorizes and directs its Chief Financial Officer to execute and deliver the Funding Agreement for and on behalf of the Authority in substantially the form submitted to this meeting with such changes therein as the Chief Financial Officer shall require or approve; and be it further

RESOLVED, that all certificates, documents, approvals, consents, directions, instructions, notices, orders, requests, representations, indemnifications and other actions permitted or required by the Funding Agreement may be given or taken by the Executive Director or the Chief Financial Officer (each, an "Authorized Representative"), without further authorization or direction by the Authority, and each Authorized Representative is hereby authorized and directed to give any such certificate, document, approval, consent, direction, instruction, notice, order, request, indemnification or other action and to take any such action at any time in the future that such Authorized Representative, with the advice of General Counsel to the Authority, may deem necessary or desirable to further the purposes of this Resolution and

to carry out, consummate and perform the duties and exercise the rights of the Authority under the Funding Agreement; and be it further

RESOLVED, that all actions heretofore taken by the members of the governing board of the Authority, committees of the governing board of the Authority, and officers and agents of the Authority with respect to the execution and delivery of the Funding Agreement are hereby ratified, confirmed and approved.

BAY AREA TOLL AUTHORITY

Scott Haggerty, Chair

The above resolution was entered into by the Bay Area Toll Authority at a regular meeting of the Authority held in Oakland, California, on April 28, 2010.

Date: April 28, 2010
W.I.: 1514
Referred by: BATA Oversight

Attachment A
BATA Resolution No. 93

FUNDING AGREEMENT
Between BAY AREA TOLL AUTHORITY
and METROPOLITAN TRANSPORTATION COMMISSION
for PAYMENT TO MTC EQUAL TO THE ESTIMATED PRESENT VALUE OF SPECIFIED
FUND TRANSFERS FOR THE NEXT 50 YEARS

draft 3/29/10

FUNDING AGREEMENT

This Funding Agreement is entered into between the Metropolitan Transportation Commission ("MTC") and the Bay Area Toll Authority ("the Authority") effective on April 28, 2010.

RECITALS

1. Streets and Highways Code section 30890 requires the Authority to transfer "net transit revenues" to MTC on a regularly scheduled basis as set forth in the Authority's annual budget resolution. Streets and Highways Code section 30884 defines "net transit revenues" as 16 percent of the revenue generated each year from the collection of the base toll at its level in existence for the 2001-02 fiscal year on three bridges: the San Francisco-Oakland Bay Bridge, the San Mateo-Hayward Bridge, and the Dumbarton Bridge. No ending date for the obligation to transfer is specified. The transfers are called "AB 664 Net Toll Revenue Reserve Transfers." The funds are allocated to capital projects that further the development of public transit pursuant to Streets and Highways Code section 30892.
2. Streets and Highways Code section 30911 provides that after the requirements of the Authority's bond indenture have been met, the Authority shall transfer to MTC on a regularly scheduled basis as set forth in its annual budget resolution, the revenues defined in Streets and Highways Code section 30913(b). The revenues defined in Streets and Highways Code section 30913(b) are "up to" 2 percent of the revenue generated each year by the collection on all bridges of the base toll at the level established by the 1988 toll increase. No minimum transfer is specified. No ending date for the obligation to transfer is specified. The transfers are called "Two Percent Transit Reserves Transfers."
3. Streets and Highways Code section 30911 provides that after the requirements of the Authority's bond indenture have been met, the Authority shall transfer on a regularly scheduled basis as set forth in its annual budget resolution, the revenues defined in Streets and Highways Code section 30914. Streets and Highways Code section 30914(a)(4) provides for 21 percent of the revenue generated each year by the collection of the base toll at the level established by the 1988 toll increase on the San Francisco-Oakland Bay Bridge to be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge. Streets and Highways Code section 30919(b) provides for the division of those funds among rail extension and improvement projects by region. MTC has historically allocated such transfers. No ending date for the obligation to transfer is specified. The transfers are called "Rail Extension Reserves Transfers."
4. MTC Resolution No. 3434, as revised, sets forth MTC's regional transit expansion program. Resolution 3434 contemplates local, regional, state and federal funding sources for

various projects, including Rail Extension Reserves Transfers, plus MTC Resolution Nos. 2004 and 3288 which govern the AB 664Net Toll Revenue Reserve Transfers and the Two Percent Transit Reserve Transfers (collectively called “Fund Transfers”). In adopting the aforementioned resolutions and administering the matters described therein, MTC is acting as the regional transportation agency for the Bay Area.

5. MTC was established under Government Code section 66500 *et seq.* to provide comprehensive regional transportation planning in the Bay Area. MTC’s regional transportation plan is required by law to estimate the region’s future transportation needs, include a schedule of priorities for the segments of the regional transportation system on a project basis to meet those needs, and include a financial plan for the system.

6. MTC has determined that the Fund Transfers are essential to the regional transportation system but that the current statutory schedule for Fund Transfers may be inadequate to timely fund some of the projects planned by MTC. It is the responsibility of MTC, expressed in Government Code section 66530, actively to seek to assist in the development of adequate funding sources to develop, construct and support transportation projects that it determines essential.

7. It is the intention of the Legislature, expressed in Government Code section 66521, that local agencies in the region (including the Authority) will participate in support of MTC and that financial support of the activities of MTC will be made available from local sources normally available for transportation purposes in the region (including a portion of the bridge toll revenues administered by the Authority). Streets and Highways Code section 30950.2 provides that the Authority is responsible for the administration of all toll revenues from the bridges.

8. MTC has determined that it will be beneficial and help to fulfill its responsibilities and implement the intention of the Legislature for the Authority to make a payment to MTC equal to the estimated present value of Fund Transfers for the next 50 years and relieve the Authority from making Fund Transfers for that 50 year period. MTC recognizes that the Authority must sell and issue subordinated toll bridge revenue bonds to fund a portion of such payments to MTC. MTC is authorized by Streets and Highways Code section 30919 to commit to multi-year allocations and expenditures for projects over extended time periods to maximize funding opportunities and project progress.

9. The Authority acknowledges its statutory obligation to participate in support of MTC and is willing to issue subordinated toll bridge revenue bonds and provide funds to MTC as aforesaid in exchange for the allocation to the Authority of all, and recognition that the Authority will be relieved of responsibility for making, AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years. This change should simplify debt market and rating agency analysis of the Authority’s credit.

10. The changes made in this Funding Agreement will not reduce the Authority’s obligation to fund the Regional Traffic Relief Plan projects described in Streets and Highways Code sections 30914(c) and 30914(d).

BASED ON AND IN RELIANCE UPON THE FOREGOING RECITALS, AND FOR GOOD
AND VALUABLE CONSIDERATION, RECEIPT OF WHICH ARE HEREBY
ACKNOWLEDGED, MTC AND THE AUTHORITY AGREE AS FOLLOWS:

1. The Authority will pay to MTC an amount equal to the present value of the toll bridge revenues that the Authority projects would be used for AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years from and after July 1, 2010 in the absence of this Funding Agreement, which amount shall not be less than \$505 million. An initial installment of \$450 million shall be paid on or before September 30, 2010. The total amount so payable shall be calculated by the Authority on and as of the date of payment of the initial installment and the remaining amount due shall be paid in a second installment as promptly as practicable thereafter (but not until it becomes clear that Senate Bill 1245, now pending in the California legislature, does not apply to the Authority's bridge tolls). The calculations shall assume that Two Percent Transit Reserves Transfers are at the two percent level. The discount rate to be used in so calculating present value shall be equal to 65 percent of the true interest cost on the subordinated toll bridge revenue bond issue expected to be sold by the Authority in the first half of 2010. Approximately \$15 million of those subordinated toll bridge revenue bonds are expected to be sold to provide a portion of the funds to be paid to MTC, and the balance of the funds to be paid to MTC are expected to be derived from toll bridge revenues.
2. MTC will use the funds paid to it by the Authority pursuant to paragraph 1 and the proceeds of investment of those funds only for the purposes permitted by law for the expenditure of funds constituting AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers. MTC will not use or permit the use of any proceeds of the Authority bonds or any funds of MTC, directly or indirectly, to acquire any securities or obligations that would cause the interest on the Authority's bonds intended by the Authority to be exempt from federal income taxation to become subject to federal income taxation or that would cause the Authority's bonds intended by it to qualify as Build America Bonds as described in Section 54AA of the Internal Revenue Code to fail to so qualify, and MTC will not take or permit to be taken any other action that would cause any such bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code or "federally guaranteed" within the meaning of Section 149(b) of the Internal Revenue Code and any applicable regulations thereunder. In the event that at any time the Authority is of the opinion that for purposes of this Section 3 it is necessary to restrict or to limit the yield on the investment of any moneys paid to MTC by the Authority hereunder or the proceeds thereof, the Authority shall so instruct MTC in writing and MTC shall take action in accordance with such instructions.
3. MTC and the Authority agree that the Authority will fulfill its entire responsibility to make AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years from the date hereof by making the payment to MTC provided for in paragraph 1 and that the Authority will not be required or obligated to

make any other Fund Transfers for 50 years from the date hereof for any reason. MTC hereby assigns to the Authority all toll bridge revenues that would have been used for AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years from and after July 1, 2010, and all rights to such toll bridge revenues.

4. MTC acknowledges that the Authority will incur indebtedness payable from and secured by the toll bridge revenues payable to the Authority pursuant to paragraph 3 and that the Authority will take other action in reliance upon the Authority's receipt and ownership of such toll bridge revenues and MTC's performance of this Funding Agreement, and MTC covenants and agrees that it will not interfere with, and that it will take all actions requested hereafter by the Authority to assure and confirm, the Authority's receipt and ownership of such toll bridge revenues.

IN WITNESS WHEREOF, this Funding Agreement has been executed by MTC and the Authority.

METROPOLITAN TRANSPORTATION COMMISSION

By_____

BAY AREA TOLL AUTHORITY

By_____